

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

VELITA GLASGOW, Special
Administrator of the ESTATE OF
CURTIS BRADFORD,

Plaintiff,

VS.

STATE OF NEBRASKA,
DEPARTMENT OF CORRECTIONAL
SERVICES; ROBERT HOUSTON,
Retired Director, Department of
Correctional Services in his official and
Individual capacities; CAMERON
WHITE, Behavioral Health Administrator
for the Nebraska Department of Correc-
tional Services, in his official and
individual capacities; CORRECT CARE
SOLUTIONS; and DR. RANDY KOHL,
in his official and individual capacities;
CITY OF OMAHA, JOHN DOE 1-100,
and COUNTY OF DOUGLAS, JOHN
DOE 1-100,

Defendant.

8:14cv394

District Court of Douglas County
Case No. CI 14-6680

**PLAINTIFF'S
MOTION TO REMAND
and TO DENY MOTIONS TO
DISMISS (Filings 4, 7 and 9)**

COMES NOW, the Plaintiffs pursuant to 28 USC 1447 and request this court remand this matter back to the Douglas County District Court, of Nebraska for the reasons stated in their contemporaneously filed brief and to deny Defendants' Motions to Dismiss (Filings 4, 7 and) by furthermore stating the following:

1. This case was originally filed in the Douglas County District Court of Nebraska on or August 18, 2014.
2. The complaint was amended on or about November 17, 2014.
3. Defendants filed a notice of removal on December 1, 2014.

4. Defendants claim as their basis for removal that they are entitled to removal pursuant to 28 U.S.C. § 1331, because the case arises under and pursuant to the Constitution, laws, or treaties of the United States; and that this Court has supplemental jurisdiction over Plaintiff's state law claims, pursuant to 28 U.S.C. § 1367, because the state claims are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

5. Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant. *Caterpillar, Inc., v. Williams*, 482 U.S. 386, 392 (U.S. 1987).

6. This Court should follow the precedent set in *Merrill Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 813 (U.S. 1986), and find that Plaintiff's claims do not depend upon a substantial question of federal law.

7. When removal of a case to federal court is challenged all doubts should be resolved in favor of remand. 28 U.S.C.A. §§1446, 1447(c). Once removal is challenged the burden is on the removing party (Defendants in the case at hand) to prove that they have met the requirements for removal. *Miller v. First Sec. Investments, Inc.*, 30 F.Supp.2d 347, E.D.N.Y., 1998.

8. This lawsuit was filed in both state and federal court. The Defendants removed the state court lawsuit to federal court and have requested the federal court to dismiss the lawsuit.

9. The proper procedure is to remand the case back to state court and if the Plaintiff cannot properly amend the lawsuit then the state court can dismiss.

10. The Plaintiff requests leave of this court pursuant to Neb. Rev. Stat. §6-1112(b), Neb. Rev. Stat. §6-1417, Neb. Rev. Stat. §6-1115 and pursuant to Fed. R. Civ. Proc. 15 (c)(i)

(ii) leave of the court amend the pleadings and to add additional parties. There is no prejudice to the additional parties because all parties have been served pursuant to statute.

11. A third amended complaint will be filed and will be served upon the defendants which will render their arguments moot and their motion to dismiss moot. The Plaintiff relies upon the Neb.Ct.R.of Pdg. §6-1115 which follows to grant leave to file the third amended complaint.

WHEREFORE, for the foregoing reasons, Plaintiff prays the Court denies Defendants' motions to dismiss and grant the remand back to state court to allow Plaintiff to file a third amended complaint.

Dated this 9th day of January, 2015.

VELITA GLASGOW, Special Administrator
of the Estate of Curtis Bradford, Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify on January 9, 2015, I electronically filed the foregoing document with the Clerk of the United States District Court for the District of Nebraska, using the CM/ECF system, causing notice of such filing to be served upon all parties' counsel of record. Additionally, I served a copy of the foregoing on Defendants' by electronic mail to their attorneys of record at the following addresses:

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